



PUBLIC NOTICE

Federal Communications Commission
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DA 19-1131

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PUBLIC SAFETY AND HOMELAND SECURITY BUREAU SEEKS COMMENT ON COMMONWEALTH OF PENNSYLVANIA AND FIRSTENERGY CORP. REQUEST FOR CLARIFICATION OR, IN THE ALTERNATIVE, WAIVER TO SHARE VHF FREQUENCIES

PS Docket No. 19-255

Comments Due: December 2, 2019

Reply Comments Due: December 17, 2019

By this Public Notice, the Public Safety and Homeland Security Bureau (PSHSB) seeks comment on a joint request by the Commonwealth of Pennsylvania (the Commonwealth) and FirstEnergy Corp. (First Energy) (collectively, Petitioners) to either (a) find that the scope of a waiver granted to Petitioners in 1999 authorizes Petitioners to share both 800 MHz and VHF channels on their systems¹ or, (b) amend the 1999 waiver to allow Petitioners to share both 800 MHz and VHF Channels on their systems.²

Interpretation of the 1999 Waiver: Petitioners ask that we confirm that their 1999 waiver permits adding VHF frequencies to their shared system,³ asserting that the waiver grant language; “including any stations they subsequently add to the system,” contemplates addition of VHF channels. We seek comment on whether the quoted language, considered in context, applies only to the addition of 800 MHz facilities as opposed to both 800 MHz and VHF facilities.

Waiver to Allow Sharing of VHF Channels: Petitioners’ alternative request for relief is an amendment to the 1999 waiver, pursuant to sections 1.3 and 1.925 of the Commission’s rules,⁴ to allow them to add VHF channels to their shared systems. Petitioners request that the waiver apply to the VHF

¹ In 1999, the Wireless Telecommunications Bureau granted Petitioners a waiver “to construct and operate a shared network on Public Safety and I/LT [Industrial/Land Transportation Category] frequencies (including *any stations they subsequently add to the system*)” *Commonwealth of Pennsylvania and GPU Energy Request for Waiver of Section 90.179 of the Commission’s Rules*, Order, 14 FCC Rcd 14029, 14036, para. 15 (WTB 1999) (emphasis added) (1999 Waiver).

² Petitioners submitted their Petition and supplement by letters to the Public Safety and Homeland Security and Wireless Telecommunication Bureaus. See Letter from Gregory E. Kunkle, Keller and Heckman LLP, to Donald Stockdale, Chief, Wireless Telecommunications Bureau, and Lisa M. Fowlkes, Chief, Public Safety and Homeland Security Bureau at 2 (Mar. 12, 2019) (Letter); Supplement to Commonwealth of Pennsylvania and FirstEnergy Corp. Request for Clarification or Amendment of Waiver, at 1, 2 (Aug. 19, 2019) (Supplement). Petitioners’ letter and supplement may be accessed using the Electronic Comment Filing System, <https://www.fcc.gov/ecfs/>, under Docket No. 19-255. The Commission’s rules make no provision for amending previously granted waivers. For administrative convenience we treat Petitioners’ request as seeking a replacement waiver rather than an amended waiver.

³ Supplement at 2.

⁴ 47 CFR §§ 1.3, 1.925.

channel licensees listed in the Appendix and “to any future stations that may be added later . . . to avoid the unnecessarily burdensome administrative task of refileing a waiver request each time a site is constructed or modified.”⁵

We seek comment on the advisability of Petitioners adding VHF channels to their shared systems and on their request to add future VHF channels without specific Commission authorization. Commenting parties should address the effects, if any, of adding VHF channels to Petitioners’ systems if such VHF channels are not exclusive authorizations, i.e., if the channels are also used by other co-channel licensees in the area.⁶

Pursuant to Sections 1.415 and 1.419 of the Commission’s rules, 47 CFR §§ 1.415, 1.419, interested parties may file comments and reply comments on or before the dates indicated above, in PS Docket No. 19-255. Comments may be filed using the Commission’s Electronic Comment Filing System (ECFS). See *Electronic Filing of Documents in Rulemaking Proceedings*, 63 FR 24121 (1998).

- Electronic Filers: Petitions may be filed electronically using the Internet by accessing the ECFS: <http://www.fcc.gov/ecfs/>.
- Paper Filers: Parties who choose to file by paper must file an original and one copy of each filing. If more than one docket or rulemaking number appears in the caption of this proceeding, filers must submit two additional copies for each additional docket or rulemaking number.

Filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail. All filings must be addressed to the Commission’s Secretary, Office of the Secretary, Federal Communications Commission.

- All hand-delivered or messenger-delivered paper filings for the Commission’s Secretary must be delivered to FCC Headquarters at 445 12th St., SW, Room TW-A325, Washington, DC 20554. The filing hours are 8:00 a.m. to 7:00 p.m. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes and boxes must be disposed of before entering the building.
- Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9050 Junction Drive, Annapolis Junction, MD 20701.
- U.S. Postal Service first-class, Express, and Priority mail must be addressed to 445 12th Street, SW, Washington DC 20554.

People with Disabilities: To request materials in accessible formats for people with disabilities (braille, large print, electronic files, audio format), send an e-mail to fcc504@fcc.gov or call the Consumer & Governmental Affairs Bureau at 202-418-0530 (voice), 202-418-0432 (TTY).

⁵ Petitioners suggest it is unnecessary for the Commission to seek comment on their proposal because section 90.179(h) of the Commission’s rules, 47 CFR § 90.179(h), authorizes FirstEnergy to share Part 90 Industrial/Business Pool VHF frequencies and Part 22 VHF frequencies with the Commonwealth. Letter at 2. We nonetheless exercise our discretion to issue this Public Notice in the interest, *inter alia*, of allowing potentially affected VHF licensees to comment on any effect grant of the waiver would have on their operations.

⁶ For example, co-channel non-exclusive VHF licensees may wish to address whether any increased loading by Petitioners because of grant of the requested waiver would impair non-exclusive VHF licensees’ access to the affected channel or channels.

Ex Parte Rules. This proceeding shall be treated as a “permit-but-disclose” proceeding in accordance with the Commission’s *ex parte* rules.⁷ Persons making *ex parte* presentations must file a copy of any written presentation or a memorandum summarizing any oral presentation within two business days after the presentation (unless a different deadline applicable to the Sunshine period applies). Persons making oral *ex parte* presentations are reminded that memoranda summarizing the presentation must: (1) list all persons attending or otherwise participating in the meeting at which the *ex parte* presentation was made; and (2) summarize all data presented and arguments made during the presentation. If the presentation consisted in whole or in part of the presentation of data or arguments already reflected in the presenter’s written comments, memoranda, or other filings in the proceeding, the presenter may provide citations to such data or arguments in his or her prior comments, memoranda, or other filings (specifying the relevant page and/or paragraph numbers where such data or arguments can be found) in lieu of summarizing them in the memorandum. Documents shown or given to Commission staff during *ex parte* meetings are deemed to be written *ex parte* presentations and must be filed consistent with section 1.1206(b) of the Commission’s rules.⁸ In proceedings governed by section 1.49(f) of the rules or for which the Commission has made available a method of electronic filing, written *ex parte* presentations and memoranda summarizing oral *ex parte* presentations, and all attachments thereto, must be filed through the electronic comment filing system available for that proceeding, and must be filed in their native format (*e.g.*, .doc, .xml, .ppt, searchable .pdf).⁹ Participants in this proceeding should familiarize themselves with the Commission’s *ex parte* rules.

Additional Information. For further information, please contact Alex Espinoza, Attorney Advisor, Policy and Licensing Division, Public Safety and Homeland Security Bureau at (202) 418-0849 or alex.espinoza@fcc.gov.

⁷ See 47 CFR §§ 1.1200 *et seq.*

⁸ *Id.* § 1.1206(b).

⁹ *Id.* § 1.49(f).

Appendix A

Commonwealth of Pennsylvania and FirstEnergy Corp. Callsigns

List of call signs each Petitioner presently contributes to the shared system and proposes to contribute to the shared system:

| Commonwealth of Pennsylvania | | | |
|------------------------------|---------|---------|---------|
| WQUZ231 | WQVG226 | WQVR895 | WQVB974 |
| WQVL664 | WQUV758 | WQLN571 | WQUG532 |
| WQUX679 | WQUY467 | WQVR895 | WQVV846 |
| WQUE282 | WQUY816 | WQUY802 | WQVG946 |
| WQUC589 | WQRJ856 | WQWL877 | WQUI446 |
| WQUX677 | WQWG501 | WQWX943 | WQWD725 |
| WQVB532 | WQVL665 | WQWA746 | WQLS309 |
| WQVV847 | WQWE404 | WQVG590 | WRCE588 |
| WQVF450 | WQVA509 | WQVL662 | |
| WQLT327 | WQUX676 | WQUL240 | |
| WQUY910 | WQVG945 | WQUW994 | |
| WQVR897 | WQVQ416 | WQUZ230 | |
| WQVT983 | WRCM947 | WQUX675 | |
| WQUE287 | WQVR394 | WQUE286 | |
| WQUX222 | WQUU666 | WQUG547 | |

| FirstEnergy Corp. ¹⁰ | |
|---------------------------------|----------|
| WRBY876 | *WPVF297 |
| WRBN333 | *WPVF301 |
| WRCB536 | *WPVF303 |
| WRBT765 | *WPVF313 |
| WRBP862 | *WPZG551 |
| *WPVF282 | *WPVF349 |
| *WPVF288 | *WPVH206 |
| *WPVF296 | *WPVF365 |
| *WPVF289 | *WPVF387 |
| *WPVF397 | |

¹⁰ Asterisks in Appendix A, above, indicate part 22 frequencies that First Energy currently is in negotiation to purchase and which will be acquired by transfer if Petitioners' pending request is granted by the Commission.